

AMENDED IN ASSEMBLY APRIL 12, 2016

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 2143

Introduced by Assembly Member Irwin

February 17, 2016

An act to amend ~~Sections 27391, 27393, and 27397.5 of Section 27390 of, and to amend, repeal, and add Sections 27391 and 27393 to,~~ the Government Code, relating to electronic recording.

LEGISLATIVE COUNSEL’S DIGEST

AB 2143, as amended, Irwin. County recorder: electronic recording.

The Electronic Recording Delivery Act of 2004 authorizes a county recorder, upon approval by resolution of the board of supervisors and system certification by the Attorney General, to establish an electronic recording delivery system for the delivery for recording of specified digitized electronic records, subject to specified conditions. The act authorizes a county recorder to enter into a contract with specified entities for the delivery for recording, and return to the party requesting recording a digitized electronic record that is an instrument affecting a right, title, or interest in real property. ~~The act also authorizes a county recorder to contract with the specified entities or their authorized agents to be an authorized submitter of a digital or digitized electronic record that is an instrument of reconveyance, substitution of trustee, or assignment of deed of trust.~~

~~The bill~~

This bill, until January 1, 2027, would authorize a county recorder to also enter into a contract with an authorized submitter for the delivery for recording, and return to the party requesting recording, of a digital or digitized electronic record that is an instrument to be recorded

consistent with a specified provision, or for the submission of a digital or digitized electronic record. *provision. The bill, until January 1, 2027,* would require an authorized submitter, as specified, and any agent submitting documents on behalf of an authorized submitter, to provide proof of financial responsibility in the form of general liability coverage, as provided.

Existing law requires the Attorney General, in consultation with interested parties, to adopt regulations for the review, approval, and oversight of electronic recording delivery systems. Existing law authorizes the regulations to include specified requirements and procedures.

This bill, until January 1, 2027, would additionally authorize the regulations to include requirements for general liability coverage as described above.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 *SECTION 1. Section 27390 of the Government Code is*
- 2 *amended to read:*
- 3 27390. (a) This article shall be known and may be cited as the
- 4 Electronic Recording Delivery Act of 2004.
- 5 (b) For the purposes of this article, the following definitions
- 6 shall apply:
- 7 (1) “Authorized submitter” means a party that has entered into
- 8 a contract with a county recorder pursuant to ~~subdivision (b) of~~
- 9 Section 27391 and is not disqualified pursuant to Section 27395.
- 10 (2) “Computer security auditor” means computer security
- 11 personnel hired to perform an independent audit of the electronic
- 12 recording delivery system. The computer security auditor shall be
- 13 independent of the county recorder and the authorized submitter
- 14 and shall not be the same contractor hired to establish or participate
- 15 in a county’s electronic recording delivery system or in the
- 16 authorized submitter’s portion of that system.
- 17 (3) “Digital electronic record” means a record containing
- 18 information that is created, generated, sent, communicated,
- 19 received, or stored by electronic means, but not created in original
- 20 paper form.

1 (4) “Digitized electronic record” means a scanned image of the
2 original paper document.

3 (5) “Electronic recording delivery system” means a system to
4 deliver for recording, and to return to the party requesting
5 recording, digitized or digital electronic records.

6 (6) “Security testing” means an independent security audit by
7 a computer security auditor, including, but not limited to, attempts
8 to penetrate an electronic recording delivery system for the purpose
9 of testing the security of that system.

10 (7) “Source code” means a program or set of programs, readable
11 and maintainable by humans, translated or interpreted into a form
12 that the electronic recording delivery system can execute.

13 (8) “System certification” means the issuance of a confirmation
14 letter regarding a county’s electronic recording delivery system
15 by the Attorney General.

16 ~~SECTION 1.~~

17 *SEC. 2.* Section 27391 of the Government Code is amended
18 to read:

19 27391. (a) Upon approval by resolution of the board of
20 supervisors and system certification by the Attorney General, a
21 county recorder may establish an electronic recording delivery
22 system.

23 (b) Upon system certification, a county recorder may enter into
24 a contract with a title ~~insurer~~, *insurer* as defined in Section 12340.4
25 of the Insurance Code, underwritten title ~~company~~, *company* as
26 defined in Section 12340.5 of the Insurance Code, institutional
27 ~~lender~~, *lender* as defined in paragraph (1), (2), or (4) of subdivision
28 (j) of Section 50003 of the Financial Code, or an entity of local,
29 state, or federal government for the delivery for recording, and
30 return to the party requesting recording, of a digital or digitized
31 electronic record that is an instrument to be recorded consistent
32 with subdivision (a) of Section 27201. The contract may provide
33 for the delivery of documents by an agent. However, the agent
34 shall not be a vendor of electronic recording delivery systems.

35 (c) (1) A county recorder may enter into a contract with an
36 authorized submitter not authorized pursuant to subdivision (b)
37 for the delivery for recording, and return to the party requesting
38 recording, of a digital or digitized electronic record that is an
39 instrument to be recorded consistent with subdivision (a) of Section
40 27201. The contract may provide for the delivery of documents

1 by an agent. However, the agent shall not be a vendor of electronic
2 recording delivery systems.

3 (2) An authorized submitter authorized pursuant to this
4 subdivision and any agent submitting documents on behalf of an
5 authorized submitter pursuant to this subdivision shall provide
6 proof of financial responsibility by providing a certificate of
7 insurance evidencing an amount of general liability coverage of
8 at least one million dollars (\$1,000,000).

9 (d) A county recorder may refuse to enter into a contract with
10 any party or may terminate or suspend access to a system for any
11 good faith reason, including, but not limited to, a determination
12 by the county recorder that termination or suspension is necessary
13 to protect the public interest, to protect the integrity of public
14 records, or to protect homeowners from financial harm, or if the
15 volume or quality of instruments submitted by the requester is not
16 sufficient to warrant electronic recordation. A county recorder may
17 also terminate or suspend access to a system if a party commits a
18 substantive breach of the contract, the requirements of this article,
19 or the regulations adopted pursuant to this article.

20 (e) Notwithstanding Section 27321, a county recorder may
21 require a party electronically submitting records to mail a copy of
22 the recorded electronic document to the address specified in the
23 instructions for mailing upon completion of recording.

24 (f) When a signature is required to be accompanied by a notary's
25 seal or stamp, that requirement is satisfied if the electronic
26 signature of the notary contains all of the following:

27 (1) The name of the notary.

28 (2) The words "Notary Public."

29 (3) The name of the county where the bond and oath of office
30 of the notary are filed.

31 (4) The sequential identification number assigned to the notary,
32 if any.

33 (5) The sequential identification number assigned to the
34 manufacturer or vendor of the notary's physical or electronic seal,
35 if any.

36 (g) *This section shall remain in effect only until January 1, 2027,*
37 *and as of that date is repealed.*

38 SEC. 3. *Section 27391 is added to the Government Code, to*
39 *read:*

1 27391. (a) Upon approval by resolution of the board of
2 supervisors and system certification by the Attorney General, a
3 county recorder may establish an electronic recording delivery
4 system.

5 (b) Upon system certification, a county recorder may enter into
6 a contract with a title insurer as defined in Section 12340.4 of the
7 Insurance Code, underwritten title company as defined in Section
8 12340.5 of the Insurance Code institutional lender, as defined in
9 paragraph (1), (2), or (4) of subdivision (j) of Section 50003 of
10 the Financial Code, or an entity of local, state, or federal
11 government for the delivery for recording, and return to the party
12 requesting recording, of a digitized electronic record that is an
13 instrument affecting a right, title, or interest in real property. The
14 contract may provide for the delivery of documents by an agent.
15 However, the agent shall not be a vendor of electronic recording
16 delivery systems.

17 (c) A county recorder may refuse to enter into a contract with
18 any party or may terminate or suspend access to a system for any
19 good faith reason, including, but not limited to, a determination
20 by the county recorder that termination or suspension is necessary
21 to protect the public interest, to protect the integrity of public
22 records, or to protect homeowners from financial harm, or if the
23 volume or quality of instruments submitted by the requester is not
24 sufficient to warrant electronic recordation. A county recorder
25 may also terminate or suspend access to a system if a party
26 commits a substantive breach of the contract, the requirements of
27 this article, or the regulations adopted pursuant to this article.

28 (d) Notwithstanding Section 27321, a county recorder may
29 require a party electronically submitting records to mail a copy
30 of the recorded electronic document to the address specified in
31 the instructions for mailing upon completion of recording.

32 (e) When a signature is required to be accompanied by a
33 notary's seal or stamp, that requirement is satisfied if the electronic
34 signature of the notary contains all of the following:

35 (1) The name of the notary.

36 (2) The words "Notary Public."

37 (3) The name of the county where the bond and oath of office
38 of the notary are filed.

39 (4) The sequential identification number assigned to the notary,
40 if any.

1 (5) *The sequential identification number assigned to the*
2 *manufacturer or vendor of the notary's physical or electronic seal,*
3 *if any.*

4 (f) *The section shall become operative on January 1, 2027.*

5 ~~SEC. 2.~~

6 SEC. 4. Section 27393 of the Government Code is amended
7 to read:

8 27393. (a) The Attorney General shall, in consultation with
9 interested parties, adopt regulations for the review, approval, and
10 oversight of electronic recording delivery systems. Regulations
11 shall be adopted pursuant to the Administrative Procedure Act
12 (Chapter 3.5 (commencing with Section 11340) of Part 1 of
13 Division 3). The regulations shall comply with Section 12168.7.

14 (b) The regulations adopted pursuant to subdivision (a) may
15 include, but need not be limited to, all of the following:

16 (1) Establishment of baseline technological and procedural
17 specifications for electronic recording delivery systems.

18 (2) Requirements for security, capacity, reliability, and
19 uniformity.

20 (3) Requirements as to the nature and frequency of computer
21 security audits.

22 (4) A statement of a detailed and uniform definition of the term
23 "source code" consistent with paragraph (7) of subdivision (b) of
24 Section 27390, and as used in this article, and applicable to each
25 county's electronic recording delivery system.

26 (5) Requirements for placement of a copy of the operating
27 system, source code, compilers, and all related software associated
28 with each county's electronic recording delivery system in an
29 approved escrow facility prior to that system's first use.

30 (6) Requirements to ensure that substantive modifications to an
31 operating system, compilers, related software, or source code are
32 approved by the Attorney General.

33 (7) Procedures for initial certification of vendors offering
34 software and other services to counties for electronic recording
35 delivery systems.

36 (8) Requirements for system certification and for oversight of
37 approved systems.

38 (9) Requirements for general liability coverage required by
39 subdivision (c) of Section 27391.

1 (10) Requirements for fingerprinting and criminal records checks
2 required by Section 27395, including a list of employment positions
3 or classifications subject to criminal records checks under
4 subdivision (f) of that section.

5 (11) Requirements for uniform index information that shall be
6 included in every digitized or digital electronic record.

7 (12) Requirements for protecting proprietary information
8 accessed pursuant to subdivision (e) of Section 27394 from public
9 disclosure.

10 (13) Requirements for certification under Section 27397.5.

11 (c) The Attorney General may promulgate any other regulations
12 necessary to fulfill his or her obligations under this article.

13 (d) An electronic recording delivery system shall be subject to
14 local inspection and review by the Attorney General. The Attorney
15 General shall furnish a statement of any relevant findings
16 associated with a local inspection of an electronic recording
17 delivery system, to the county recorder and the district attorney of
18 the affected county, and to all technology vendors associated with
19 that system.

20 (e) *This section shall remain in effect only until January 1, 2027,*
21 *and as of that date is repealed.*

22 SEC. 5. *Section 27393 is added to the Government Code, to*
23 *read:*

24 27393. (a) *The Attorney General shall, in consultation with*
25 *interested parties, adopt regulations for the review, approval, and*
26 *oversight of electronic recording delivery systems. Regulations*
27 *shall be adopted pursuant to the Administrative Procedure Act*
28 *(Chapter 3.5 (commencing with Section 11340) of Part 1 of*
29 *Division 3). The regulations shall comply with Section 12168.7.*

30 (b) *The regulations adopted pursuant to subdivision (a) may*
31 *include, but need not be limited to, all of the following:*

32 (1) *Establishment of baseline technological and procedural*
33 *specifications for electronic recording delivery systems.*

34 (2) *Requirements for security, capacity, reliability, and*
35 *uniformity.*

36 (3) *Requirements as to the nature and frequency of computer*
37 *security audits.*

38 (4) *A statement of a detailed and uniform definition of the term*
39 *“source code” consistent with paragraph (7) of subdivision (b) of*

1 Section 27390, and as used in this article, and applicable to each
2 county's electronic recording delivery system.

3 (5) Requirements for placement of a copy of the operating
4 system, source code, compilers, and all related software associated
5 with each county's electronic recording delivery system in an
6 approved escrow facility prior to that system's first use.

7 (6) Requirements to ensure that substantive modifications to an
8 operating system, compilers, related software, or source code are
9 approved by the Attorney General.

10 (7) Procedures for initial certification of vendors offering
11 software and other services to counties for electronic recording
12 delivery systems.

13 (8) Requirements for system certification and for oversight of
14 approved systems.

15 (9) Requirements for fingerprinting and criminal records checks
16 required by Section 27395, including a list of employment positions
17 or classifications subject to criminal records checks under
18 subdivision (f) of that section.

19 (10) Requirements for uniform index information that shall be
20 included in every digitized or digital electronic record.

21 (11) Requirements for protecting proprietary information
22 accessed pursuant to subdivision (e) of Section 27394 from public
23 disclosure.

24 (12) Requirements for certification under Section 27397.5.

25 (c) The Attorney General may promulgate any other regulations
26 necessary to fulfill his or her obligations under this article.

27 (d) An electronic recording delivery system shall be subject to
28 local inspection and review by the Attorney General. The Attorney
29 General shall furnish a statement of any relevant findings
30 associated with a local inspection of an electronic recording
31 delivery system, to the county recorder and the district attorney
32 of the affected county, and to all technology vendors associated
33 with that system.

34 (e) This section shall become operative on January 1, 2027.

35 SEC. 3.—Section 27397.5 of the Government Code is amended
36 to read:

37 ~~27397.5.—(a) A county recorder may include in the county's~~
38 ~~electronic recording delivery system a secure method for accepting~~
39 ~~for recording a digital or digitized electronic record.~~

1 ~~(b) A county recorder may contract with an authorized submitter~~
2 ~~or their authorized agents, to be an authorized submitter of the~~
3 ~~documents specified in subdivision (a).~~

4 ~~(c) With respect to the electronic submission of the records~~
5 ~~described in subdivision (a), the requirements that an authorized~~
6 ~~submitter be subject to a security audit under Section 27394 and~~
7 ~~a criminal records check under Section 27395 shall not apply where~~
8 ~~the certification requirements of subdivision (d) have been met.~~

9 ~~(d) (1) In order for subdivision (c) to apply, the county recorder~~
10 ~~and the Attorney General shall certify that the method of~~
11 ~~submission allowed under the system will not permit an authorized~~
12 ~~submitter or its employees and agents, or any third party, to modify,~~
13 ~~manipulate, insert, or delete information in the public record,~~
14 ~~maintained by the county recorder, or information in electronic~~
15 ~~records submitted pursuant to subdivision (b) of Section 27391.~~

16 ~~(2) Certification under this section may be withdrawn by either~~
17 ~~the county recorder or the Attorney General at any time either~~
18 ~~determines that the requirements of this subdivision are not met.~~

19 ~~(e) For purposes of this section, an agent of an authorized~~
20 ~~submitter shall not include a vendor of electronic recording delivery~~
21 ~~systems.~~